Rosewood Mfg. Co., Inc. *and* Amalgamated Clothing and Textile Workers Union, AFL-CIO. Case 26-CA-9382

30 March 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND HUNTER

On 29 April 1983 Administrative Law Judge Marion C. Ladwig issued the attached decision in this proceeding. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Rosewood Mfg. Co., Inc., Charleston, Mississippi, its officers, agents, successors, and assigns shall take the action set forth in the recommended Order.

CHAIRMAN DOTSON, dissenting in part.

I disagree with my colleagues with regard to two incidents. The first incident occurred about 9 October when Supervisor Jones told employee Melton that the plant manager had taken her "off of a machine because you couldn't make production on your job and made you the service girl, and then you all turn around and do him like this." I disagree with the majority and the judge in holding that this statement violated Section 8(a)(1) of the Act. Instead I would rely on the dissenting opinion filed by former Member Kennedy in *Oscar Enterprises*, 214 NLRB 823 (1974). I agree with former Member Kennedy that a statement such as the one involved here reflects nothing more than pique at what the Respondent "considered the ingratitude of the employees." Such remarks would not be unlawful in my view.

Further, in late October a statement of "shock" was made by Plant Manager Jones. I would agree with the Respondent in this case that it is not an 8(a)(1) violation for a company representative to express surprise that an employee supports the Union. I do not believe that the statement intended to create the impression that the Respondent would treat employees less favorably because of their union support. This conclusion has no factual basis and is merely speculation on the part of the judge and my colleagues.

DECISION

STATEMENT OF THE CASE

MARION C. LADWIG, Administrative Law Judge. This case was tried at Charleston, Mississippi, August 25, 1981.[1] The charge was filed by the Union October 15 (amended December 1), and the complaint was issued November 24 (amended December 14). The primary issues are whether the Company, the Respondent, during the preelection campaign, (a) unlawfully interrogated and threatened employees, (b) engaged in unlawful surveillance, and (c) engaged in other coercive conduct in violation of Section 8(a)(1) of the National Labor Relations Act.

On the entire record, including my observation of the demeanor of the witnesses, and after consideration of the General Counsel's closing arguments and the Company's brief, I make the following

[1] All dates are in 1981 unless otherwise indicated.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The judge inadvertently stated that the hearing in this case was held 25 August 1981 rather than 25 August 1982.

We find it unnecessary to rely on the judge's finding that the Respondent's president, Blauer, did not specifically disavow his supervisors' prior plant closure threats in his 14 October 1981 speech to the employees. In so doing, we note that there is no evidence that Blauer ever was apprised of these prior threats.

[2] We find it unnecessary to pass on the judge's conclusion that the Respondent violated Sec. 8(a)(1) of the Act based on his finding that Blauer made an implied threat of plant closure by not giving a direct answer to employee Williams' statement that rumor had it that Blauer would close the plant if the Union came in. In so doing, we note that the finding of this additional violation would be cumulative and would not affect the Order materially.

The judge concluded that the Respondent violated Sec. 8(a)(1) of the Act by prohibiting and maintaining a rule against the distribution of union literature in nonworking areas during nonworking time. The Respondent excepts to the finding of this violation, contending solely that its conduct was isolated and that it does not warrant a remedial order. We find the Respondent's contentions to be without merit.

We adopt the judge's conclusion that the Respondent violated Sec. 8(a)(1) of the Act by Supervisor Jones' 9 October 1981 statement to employee Melton and by Plant Manager Jones' statements to employee Williams in the latter part of October 1981. We find that these statements reasonably tended to coerce the employees in the exercise of their Sec. 7 rights. Contrary to our dissenting colleague, the fact that Supervisor Jones' statement may have been made in a fit of pique would not negate the coercive impact of her statement and Plant Manager Jones' subjective reasons for making his remarks to Williams are irrelevant in considering the impact of his statements under Sec. 8(a)(1) of the Act.

FINDINGS OF FACT

I. JURISDICTION

The Company, a corporation, produces outerwear and jackets at its facility in Charleston, Mississippi, where it annually ships goods valued over $50,000 directly outside the State. The Company admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Interrogations and Threats*

1. By Fanny Bradford

On October 9, the morning after the first union meeting, many of the employees wore union buttons at work. As credibly testified to by employee Marcie Hervey, Supervisor Fanny Bradford came to Hervey's machine and asked her who was at the meeting, what was said, and what the Union was for (Tr. 178). Bradford then went to the office and, upon returning, asked Hervey "if [Plant Manager] Ray [Jones] left would we drop the union because he felt like we were doing it to spite him" (Tr. 179). Bradford "told me that if I knew what was good for me, I better leave this union business alone because Mr. [Charles] Blauer [the company president] was going to close the plant down" (Tr. 179). Then, after going again to the office, Bradford talked to other employees who were wearing union buttons. Bradford denied speaking to Hervey (Tr. 275), denied telling any employee that Blauer would close the plant (Tr. 270), denied interrogating employees about the Union (Tr. 275), and denied asking any employee if they would drop the Union if the Company got rid of Plant Manager Jones claiming, "No, because I didn't care if they dropped it or not" (Tr. 270). By her demeanor on the stand, Bradford impressed me most unfavorably as a witness. I discredit her denials. Bradford gave no legitimate purpose for asking the questions and gave no assurances against reprisals. I find that the interrogation tended to be coercive, and that the interrogation and threat to close the plant, as well as the inducement to drop the Union in exchange for improved working conditions (by replacing the plant manager), violated Section 8(a)(1) of the Act.

When Supervisor Bradford went to machine operator Martha Burt's machine that morning, she asked Burt if she had a union button. Burt said yes and showed Bradford where it was, on Burt's collar. Bradford later returned and asked Burt "what if we get [a new plant manager], would you and the other girls consider dropping out of the union?" and added, "if you don't, the plant will close" (Tr. 158–159). I discredit Bradford's denials and find that the promise of improved conditions and the threat were further violations of Section 8(a)(1).

2. By Jane Jones

On the same morning, October 9, Supervisor Jane Jones went to operator Diane Todd's machine, said she had never had any dealings with a union before, and asked Todd what the union represented, what it was all about (Tr. 121). After Todd answered, Jones said that President Blauer would not have the Union in his plant, that he would lock the doors, walk off, and take the machinery back, and that he would not have anyone telling him what to do and how to run his plant (Tr. 122). (I discredit Jones' denials; she appeared on the stand to be less than candid.) I find that the interrogation tended to be coercive, and that it and the threat of plant closure violated Section 8(a)(1).

The same morning, as service girl Denise Melton credibly testified, Supervisor Jones first asked what kind of pin Melton was wearing and then asked "[D]on't you know that Mr. Blauer would pack the machines up in the plant and be moved back to Boston overnight and all of us would be out of a job?" (Tr. 173). I discredit Jones' denials and find that the threat of plant closure violated Section 8(a)(1).

3. By Joyce Martin

On October 17, as employee Sherry Doubleday credibly testified, Supervisor Joyce Martin went to her home and told her that President Blauer "would carry his machines back to Boston just like he brought them in here," that he "had the right to do it because they were his machines," that there was not "any sense in us trying to jeopardize someone else's job when they really needed the job," and that "if we wasn't satisfied with the job, why didn't we quit" (Tr. 168–169). Martin did not testify. I find that this additional threat of plant closure violated Section 8(a)(1).

In the same conversation, Supervisor Martin also told employee Doubleday, "Mr. Blauer said that he was not in the blind of this union, that he knew it a long time before the union started to move in" (Tr. 169). I find, however, that this statement did not create the impression that the employees' union activities were under surveillance. I therefore dismiss that allegation in the complaint.

In its brief, the Company challenges the credibility of the employee witnesses, citing Plant Manager Jones' instructions to the supervisors about 8:30 October 9 "not to discuss the union or union buttons with the employees." (Supervisor Bradford claimed that the supervisors' meeting was held "around 8:30" that morning (Tr. 269); Supervisor Jane Jones claimed it was "around 10:00" (Tr. 257).) In making the contention, however, the Company ignores President Blauer's undisputed testimony that later that same day he called Plant Manager Jones back and "gave him a list of do's and don'ts and rules for supervisors to follow from that point on" (Tr. 283). The Company did not disclose the content of these rules.

4. By Charles Blauer

On October 14, when President Blauer held an employee meeting, he did not specifically disavow the plant closure threats. Instead, after talking about the recent layoffs, the plant's losing money, and productivity problems, he admittedly told the employees "there were a lot of pressures on me just to, you know, I mean we have a

reason to kiss [the plant] goodbye, but I didn't want to do it because I felt we had a good plant" (Tr. 288).

The next day, President Blauer met privately with employees Joe Williams, Sherry Haynes, and Diane Todd in the plant manager's office, at their request. Williams first asked about the rumor that Blauer would close the plant if the Union came in. Williams recalled that Blauer answered "that if I put myself in his position, if I had invested as much money as what he had in Rosewood, that [is] what would I do" (Tr. 29). Todd recalled that Blauer "told him that he was a smart man, to figure it out for himself. What would he do if he was in . . . his shoes"; "he never really gave us a definite answer. He said what would you do if you was in my shoes"; and "you're a smart man, Joe, you tell me. What would you do . . . if you was in my shoes" (Tr. 126, 137, 144). Haynes, who appeared to have more difficulty in recalling the long conversation, remembered Blauer asking "what would you do if you were in my place" (Tr. 93, 113–115). Blauer acknowledged that he asked, "What would you do if you were in my shoes" (Tr. 289), but he claimed he first gave a direct response to Williams' statement that "the rumor's all around that if the union comes in, this plant's going to close down" (Tr. 288–289). On direct examination he claimed he first stated "that if this plant goes down, it's going to be because of economic reasons and we had lost $160,000 here in six months and we got a lot of money tied up in this plant" (Tr. 289). On cross-examination, Blauer claimed that he answered that "this plant is losing money hand over fist, or something to that effect. . . . We've lost $160,000 in six months. If this plant goes or stays, it will be based on its productivity and its economic record, and nothing else" (Tr. 313). Blauer did not appear to be entirely candid. I discredit his claim that he gave a direct answer to Williams' question about plant closure and find that he gave the evasive answer, implying that he might close the plant if the Union came in. Although Blauer did make statements about the necessity of productivity and profitability for the plant to remain open, I find that in answering Williams' question about the plant closure rumor, Blauer made an implied threat to close the plant if the employees selected the Union as their bargaining representative, in violation of Section 8(a)(1).

I dismiss the allegation that President Blauer disparaged the three employees "for their support of the Union by characterizing the employees as disruptive." I credit Blauer's testimony that he was referring to the Union being disruptive, after recounting a strike situation in another State.

I also dismiss the allegation that Blauer, by soliciting employee complaints, promised them increased benefits and improved terms and conditions of employment. During the meeting, Blauer did ask the employees: "What's wrong with this plant? Don't we have good machinery? Don't we have a new building? Don't we have good lighting? Don't we have good air conditioning?" (Tr. 306). I find, however, that he was not soliciting complaints; he was merely asking rhetorical questions, as a way of boasting about working conditions at the plant.

B. *Surveillance*

About 4:45 p.m., as employees were leaving one of the Union's October meetings at the county courthouse, one of the employees told employee Sherry Haynes, "There's Fanny Bradford" (Tr. 79, 103). Haynes turned and saw Supervisor Bradford standing on the outside of her car, parked across the street from the courthouse, "looking right straight at us" (Tr. 103). Bradford was standing in plain sight of the union supporters leaving the union meeting, obviously keeping the meeting under surveillance. Bradford testified that she went by the courthouse on the way home, but had no reason to stop (Tr. 267–268). As indicated above, she impressed me most unfavorably as a witness; I discredit her denials that she engaged in the surveillance. I therefore find, as alleged in the complaint, that she kept the union meeting under surveillance in violation of Section 8(a)(1).

I dismiss, however, the three other allegations of surveillance.

On one occasion in October, Supervisor Bradford was in the lunchroom when employee Haynes entered and began an open discussion with other employees about the Union. It was toward the end of the lunch period. Bradford remained seated at the table during the conversation. Supervisors sometimes take their breaks and have lunch there. (I discredit Bradford's denial that she ever heard Haynes say anything about the Union.)

The other allegations involve members of management watching employees attending union meetings at a private parking lot across the street from the plant. Organizer Danny Forsyth testified that he held informal union meetings there after work, where the employees leaving the plant "would see me" and "come on over" (Tr. 68). On one occasion in October, when President Blauer was inspecting the plant and stepped outside, he saw the crowd of people in the parking lot. He looked across the street at them several times during the short time he was outside the plant, but did not take any notes or make any lists. On another occasion, Plant Manager Ray Jones looked at the employees as he twice drove slowly around the plant (Tr. 84). (Jones testified that he saw the employees meeting at the parking lot 10 or 12 times, but denied driving around the plant. I discredit the denials.) He did not stop; he merely looked in the employees' direction.

The Board has held that "[u]nion representatives and employees who choose to engage in their union activities at the Employer's premises should have no cause to complain that management observes them." *Porta Systems Corp.*, 238 NLRB 192 (1978). I agree with the Company that there was no unlawful surveillance on these three occasions. Supervisor Bradford merely remained in the breakroom when employee Haynes entered and began openly discussing the Union. As argued by the Company, the parking lot meetings were held in full public view. They could be readily observed by anyone leaving the plant. President Blauer did nothing but look in that direction while remaining on company property, and Plant Manager Jones did nothing else while driving slowly around the plant twice. I therefore dismiss the three allegations.

C. *No-Distribution*

About November 10, President Blauer approached Sherry Haynes and three other employees who were passing out union literature at the plant entrance at quitting time. He admittedly told Haynes that "this is my property and I will not allow you to hand out leaflets here" (Tr. 279). The next afternoon, he admitedly asked some of the employees in the plant if they were planning to hand out any more literature that day and, upon learning that they were not, told them, "Well, good, because I don't want any trouble around this place" (Tr. 280).

In its brief the Company admits that President Blauer "prevented employees from distributing union literature on company property," but contends that the "presumptively invalid no solicitation/distribution rule that had been posted on the plant's bulletin board during the period in question has since been replaced" with a rule conforming to the Board's current standard and that "a remedial order at this point would be moot."

A new, admittedly lawful rule was posted December 3. The Company does not dispute, however, that between that time and the December 18 election, the employees were not informed that they could pass out union literature during nonworking time in nonworking areas (Tr. 308). The new rule was not called to the employees' attention (Tr. 105) and did not refer to distributing literature in nonworking areas (R. Exh. 1).

I find that about November 10, the Company unlawfully prevented the distribution of union literature during nonworking time in a nonworking area, and about November 11, maintained and enforced the unlawful prohibition, violating Section 8(a)(1), and that a remedial order is required.

D. *Other Coercive Conduct*

On October 9, after Supervisor Jane Jones (the plant manager's wife) made the plant closure threat to service girl Melton, Jones approached Melton at one of the machines and told her "[Plant Manager] Ray [Jones] took you off of a machine because you couldn't make production on your job and made you a service girl, and then ya'll turn around and do him like this" (Tr. 174). I discredit Jones' denials that she had such a conversation with Melton. The Company contends that even if the statement were made, it was "completely devoid" of any "threat of reprisal or force" and therefore "within the purview of § 8(c) of the Act." I disagree. I find that statement, pointing out a favor her husband did Melton before she supported the Union, tended to imply that she would be treated differently in the future because of her protected concerted activity. Particularly in the context of the plant closure threat, I find that the statement was coercive and violated Section 8(a)(1). *Oscar Enterprises*, 214 NLRB 823 (1974).

In the latter part of October (about a week after President Blauer made the implied plant closure threat to employee Williams and two others), mechanic Williams told Plant Manager Jones he was turning in his 2 weeks' notice. Williams explained "I didn't know why that all of a sudden that I didn't do my job, and I didn't know whether it was on account of this union stuff come up, and I guess that was all what brought it on" (Tr. 35). As Williams credibly testified, Jones said, "I was shocked out of my boots that you did something like this, and we couldn't understand it why you did it" (Tr. 36). According to Jones, Williams said "He'd got too much involved. And I told him that I was kind of shocked that he had gotten involved as much as he had" (Tr. 248). Jones further testified (Tr. 254):

> A. I was shocked that he got involved with the union because I was having to do his work.
>
> Q. You felt like you were helping him out and then he gets involved. . . .
>
> A. I was helping him out, yes, right.
>
> Q. And then he goes and betrays you by getting involved in the union. Is that right?
>
> A. You could put it that way.

As in *Operating Engineers Local 12*, 237 NLRB 1556, 1558 (1978), in which a statement "conveyed to the employees the message that the Respondent equated engaging in union activity, which is a protected statutory right, with employee disaffection or disloyalty," I find that Jones' statement that he was "shocked" that Williams had gotten involved (in the union activity) tended to create the impression that the Company would treat employees less favorably because of their union support. Although he was resigning, Williams was still employed, and such a statement would tend to coerce other employees as well. I find that it violated Section 8(a)(1).

CONCLUSIONS OF LAW

1. By coercively interrogating employees about union support and activities, by making threats of plant closure if the Union came in, by promising improved conditions if the employees abandoned the Union, by engaging in surveillance of a union meeting at the county courthouse, by unlawfully preventing and maintaining a rule against the distribution of union literature during nonworking time in a nonworking area, and by coercing employees, making statements that an employee turned against the plant manager, and that the manager was shocked at an employee's union involvement, the Company engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. The Company did not engage in surveillance of the union activities in the lunchroom or at the parking lot across the street, disparage employees by characterizing them as disruptive, solicit employee complaints and grievances, or create the impression of surveillance of union activities at the plant.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find it necessary to order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[2]

ORDER

The Respondent, Rosewood Mfg. Co., Inc., Charleston, Mississippi, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating any employee about union support or union activities.

(b) Threatening to close the plant if a union comes in.

(c) Promising improved working conditions if the employees abandon a union.

(d) Engaging in unlawful surveillance of any union meeting.

(e) Prohibiting the distribution of union literature in nonworking areas during nonworking time.

(f) Coercing employees by making statements implying reprisals for union activity or equating union activity with employee disaffection or disloyalty.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its facility in Charleston, Mississippi, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 26, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[3] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT coercively question you about your union support or activities.

WE WILL NOT threaten to close the plant if a union comes in.

WE WILL NOT promise improved working conditions for giving up a union.

WE WILL NOT unlawfully keep watch at a union meeting.

WE WILL NOT stop you from distributing union literature in nonworking areas during nonworking time.

WE WILL NOT make any statement implying reprisals for supporting a union.

WE WILL NOT state or imply that you are disloyal for supporting a union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

ROSEWOOD MFG. CO., INC.